

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.1690/2014

Order Reserved on:14.01.2016

Order pronounced on:27.01.2016

**Hon'ble Justice Shri B.P.Katakey, Member (J)
Hon'ble Shri K.N. Shrivastava, Member (A)**

Shri Udbhash Mukherjee
Teacher, Age 63 years
S/o Late Sh.Sudhanshu Kumar Mukherjee
R/o RZ-145 Phase-II, Gopal Nagar,
Near Electricity Transformer,
Najafgarh,
New Delhi-110043. Applicant

(By Advocate: Shri Subhash Gosain)

Versus

1. Kendriya Vidhayalaya Sangathan
Through:-
Chairman, KVS (HQ)
18, Institutional Area,
SJS Marg, Katwaria Sarai,
New Delhi-110016
2. Kendriya Vidhayalaya Sangathan
Through:-
Commissioner, KVS (HQ)
18, Institutional Area,
SJS Marg, Katwaria Sarai,
New Delhi-110016. Respondents

(By Advocate: Shri K.M. Singh)

ORDER

By Hon'ble Shri K.N.Shrivastava,M(A):

This OA has been filed by the applicant under section 19 of Administrative Tribunal Act, 1985 against the order No. F.21(UM)/2006-KVS(DR)/29086 dated 28.6.2008 (Annexure A-1) whereby the charge sheet has been issued by the respondents under Rule 14 of CCS(CCA) Rules, 1965 to the applicant, order No. F. (674)/21(UM/2006/KVS/DR/18120-24, dated 6.09.2011(Annexure A-2) whereby the respondents have directed that the disciplinary proceedings started under the order at annexure A-1 shall be deemed to be proceedings under rule 9 (2) (a) of CCS (Pension) Rules, 1972, order dated 29.08.2013 whereby the respondents have appointed Shri Regi John as the new Presenting Officer (Annexure-A3), order F No. (674)/UM/2013/KVS(DR)/8000-05 dated 29.8.2013 (Annexure A-4) whereby Shri Dheer Singh has been appointed as Inquiry Officer, order No.F.(674)/21(UM)/2006/KVS/DR/74-75 dated 08.1.2014 (Annexure A-5) whereby the applicant's representations dated 03.12.2013 and 16.12.2013 seeking withdrawal of the charge sheet issued to him have been turned down by the respondents. The specific reliefs sought in the OA read as under:-

- "(a) Direct to call for complete records of the case;
- (b) Direct the respondents to release withheld terminal benefits with interest from the due date;
- (b) Quash and set aside the impugned orders dated 28.6.2006 (Annexure-A/1), 6.9.2011 (Annexure-A/2), 29.8.2013(Annexure-A/3 & A/4) and 8.1.2014 (Annexure-A/5) so far as these relate to initiation and continuation of disciplinary proceedings and not releasing of terminal benefits;
- (c) Direct the respondents to release all kinds of consequential benefits;
- (d) Direct the respondents to pay the cost of litigation to the applicant;
- (e) Pass any such order or direction which this Hon'ble thinks as fit and proper in the facts and circumstances of the case."

2. The brief facts of the case are as under:-

The applicant joined the respondent organization i.e. Kendriya Vidyalaya Sangathan (KVS) as a Drawing teacher in the year 1981. He retired on 31.8.2011 after attaining the age of superannuation. While he was still in service, the charge sheet dated 28.6.2006 was issued to him in which the following 4 charges were leveled against him:-

" STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI U. MUKHERJEE, DRAWING TEACHER, KENDRIYA VIDYALAYA NO.2 DELHI CANTT. (2nd SHIFT)

ARTICLE-I

That Sh. U.Mukherjee, while functioning as Drawing Teacher, Kendriya Vidyalaya No.2 Delhi Cantt.(2nd Shift) has made complaint against the Principal, KV No.2 Delhi Cantt. To Aaj Tak Channel/Sh.Arjun Singh, Hon'ble Minister, Ministry of HRD, Sh. Acharya, Addl. Secretary, Ministry of HRD and Vice-Chairman, KVS, Chairman, VMC, KV No.2 Delhi Cantt. Directly regarding misappropriation in violation of Article-73 Clause (1) of Education Code which states that all representation from the staff (other than Principal) shall be submitted through Principal of the Vidyalaya. Thus he failed to maintain absolute integrity, devotion of his duty and exhibited willful act of un-becoming of KVS employees.

The aforesaid act of Sh. U.Mukherjee thus constitutes a misconduct under Rule 3(1) (i), (ii) & (iii) of CCS(Conduct)Rule, 1964 as applicable to KVS employees.

ARTICLE-II

That the said U.Mukherjee, Drawing Teacher of KV No.2 Delhi Cantt. (2nd Shift) while residing in the staff quarter no.13 allotted to Sh. U.Mukherjee has misbehave with Sh. B.K. Rabha, Drawing Teacher, KV No.2 Delhi Cantt. (1st Shift) who is residing in Staff Quarter No.12, allotted to him on 23.01.2006 and use unparliamentary language/abusing, threatening and using castist remarks to Sh. Rabha and his other family members as "तुम साले जंगल॥ आद्वासी असम से द्वाल॥ तो आगए तो तुम साले नीच-कमीने हो तथा तुम माटर का नौकर॥ करने आगए तथा हम ॥॥मणो के बराबर माबैठने का हामत करते हो. या तो कालोनी छोड़ दो तथा चमार॥ व भांशय॥ का बाती माजाकर रहो नहां तो तुझे व तेर॥ पानी को गोल॥ मार द॥ जाएगी तथा बाचे का अपहरण करवा द्या जायेगा." Thus he failed to maintain absolute integrity, devotion of his duty and exhibited willful act of un-becoming of KVS employees. The aforesaid act of Sh. U. Mukherjee thus constitutes a misconduct under Rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rule, 1964 as applicable to KVS employees.

ARTICLE-III

That the said Sh. U.Mukherjee, while functioning in the aforesaid capacity in the aforesaid Vidyalaya has made false compliant against the then Vice-Principal, (2nd Shift), Smt. Prem Bala, on 19.07.2005 to Smt. A.N. Siddiqui, Education Officer, KVS (RO) directly. Whereas Article-73 Clause (1) of Education Code states that all representations from the staff (other than Principal) shall be submitted through Principal of the Vidyalaya. Thus he failed to maintain absolute integrity, devotion of his duty and exhibited will full act of un-becoming of a KVS employees.

The aforesaid act of Sh. U. Mukherjee thus constitutes a misconduct under Rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1974 as applicable to KVS employees.

ARTICLE-IV

That the said Sh. U.Mukherjee, while functioning in the aforesaid capacity in the aforesaid Vidyalaya, is in the habit of making false allegation, entering in the unnecessary arguments, using unparliamentary language and abusive behaviour with his fellows. Colleagues as well as superiors. Sh. U.Mukherjee also in the habit of harassing his colleagues who belongs to SC/ST/OBC Community. Thus he failed to maintain absolute integrity, devotion of his duty and exhibited willful act of unbemoming of a KVS employees.

The aforesaid act of Sh.U.Mukherjee thus constitutes a misconduct under Rule 3(1) (i), (ii)& (iii) of CCS (Conduct) Rules, 1964 as applicable to KVS employees.”

3. For various reasons, the disciplinary proceedings could not be completed while the applicant was still in service. After his retirement on 31.8.2011, respondents vide their order dated 06.9.2011 (Annexure A-2) have directed that the ongoing disciplinary proceedings against the applicant is deemed to be proceedings under rule 9(2) (a) of CCS (pension) Rules, 1972. Due to the pendency of the disciplinary proceedings, only provisional pension has been sanctioned to the applicant and other retiral benefits have been withheld. Aggrieved by the orders of the respondents at Annexures A-1, A-2, A-3, A-4 and A-5, the instant OA has been filed.

4. Pursuant to the notice issued, the respondents entered appearance and filed their reply. The applicant filed his rejoinder as well as submitted his written submissions. As the pleadings were complete, the matter was taken up for final hearing on 14.01.2016. Shri Subhash Gosain learned counsel for the applicant and Shri K.M. Singh learned counsel for the respondents argued the case.

5. Learned counsel for the applicant submitted that the applicant replied to the charge sheet dated 28.6.2006 on 05.7.2006 denying all the charges. The respondents did not

accept the reply of the applicant and chose to appoint Shri Madhup Mehrotra as Inquiry Officer (IO). Shri Gosain said that the applicant wanted to appoint one Shri Nangia as his defence assistant but the same was not allowed by the IO, thereafter, the applicant proposed to appoint Shri J.P.S. Rathore, retired Principal to act as his defence assistant but IO insisted to produce his retirement certificate and hence, the applicant expressed his lack of confidence in the IO and sought his replacement vide his representation dated 23.11.2010 (Annexure A-11) which was not considered by the respondents and they rejected it vide their order dated 29.11.2010 (Annexure A-12). Against it, the applicant filed an appeal on 29.11.2010 which was also rejected by the respondents vide order dated 17.3.2001 (Annexure A-3). Learned counsel submitted that no enquiry was conducted by the respondents against the applicant till the date of his retirement on 31.8.2011. Nonetheless, the respondents just to harass the applicant, have withheld his retiral benefits and vide the impugned order dated 06.9.2011 (Annexure A-2) have decided to continue the disciplinary proceedings against the applicant under Rule 9 (2) (a) of CCS(Pension) Rules, 1972 which is completely illegal and arbitrary. It was also submitted that the respondents' contention that under

article 80 of the KVS education code, KVS have adopted CCS(CCA) rules, 1965 and under Article 159 of KVS accounts code, KVS have adopted the CCS(Pension)Rules, 1972 to regulate the pension matters of their employees and hence, the disciplinary proceedings initiated against the applicant under CCS(CCA) Rules, 1965 could be deemed to be the proceedings under Rule 9 of the CCS (Pension) Rules, 1972 after retirement of the applicant cannot be allowed to withstand. Learned counsel in support of his argument, placed reliance on the order of this Tribunal in the case of ***K.S.Malik Vs. Union of India & Ors.(KVS)*** in OA-886/2007 dated 23.10.2007 wherein the Tribunal has held that "*withholding the retiral benefits and continuing with the disciplinary proceedings after retirement cannot be countenanced in law for want of any valid justification and statutory requirement.*" Learned counsel vehemently argued that a formal notification to the effect that the power of President of India under Rule 9 of the CCS(Pension) Rules, 1972 can be exercised by the Chairman, KVS is a must. (Rule 9 states that for the departmental proceedings against the govt. servant to be continued, post his retirement, explicit approval of the President with prior consultation with the UPSC is a mandatory requirement). Concluding his

arguments, learned counsel for the applicant submitted that the initiation of the disciplinary proceedings against the applicant and continuing the same even after his retirement has been done by the respondents with the sole intention of harassing him and that all the impugned orders are illegal and liable to be set aside and hence the prayers made in the OA may be granted.

6. Per contra Shri K.M. Singh, learned counsel for the respondents submitted that the disciplinary proceedings against the applicant was started on the basis of a detailed complaint lodged by the Principal of KV No.2 Delhi, Cantt, where the applicant was then working. The Assistant Commissioner, KVS, Regional Office, Delhi asked Ms. Devasena Education officer to make a preliminary inquiry into the complaint which was against the behavior and working of the applicant. Ms. Devasena submitted a detailed report in that regard on 10.4.2006 wherein the allegations made against the applicant were found to be *prima facie* true. Accordingly, the charge sheet dated 28.6.2006 comprising 4 articles of charges was issued to the applicant. The applicant failed to submit his written reply in defence for which reminder dated 7.10.2009 was issued to him pursuant to which, he ultimately filed his written reply vide

representation dated 21.10.2009. Not satisfied by the reply, the disciplinary authority decided to go ahead with the disciplinary proceedings and initially appointed Shri M.Mehrotra, Asstt. Commissioner as Inquiry Officer (IO) and Shri N.K. Singh Presenting Officer (PO) vide order dated 17.11.2009. Learned counsel stated that the applicant has been trying to avoid the conduct of the disciplinary proceedings on some pretext or the other. It was also submitted the applicant, vide his representation dated 14.11.2010 alleged that the IO was biased against him. The said representation was rejected. The applicant filed an appeal against the said order which was also rejected by the appellate authority on 17.3.2011. The applicant filed a review application on 27.3.2011 which was also rejected on 05.5.2011. The applicant filed another representation dated 24.5.2011 for removal of the IO which too was rejected on 17.8.2011 and he was directed to co-operate in the disciplinary proceedings . After his retirement on 31.8.2011, the said disciplinary proceedings has been continued by the order dated 06.9.2011 (Annexure A-2) stating that the disciplinary proceedings started will be deemed to be proceedings under Rule 9(2) (a) of CCS(Pension) Rules, 1972. It was also submitted that for administrative

reasons, the disciplinary authority vide order dated 2.9.2013 appointed Shri Dheer Singh, as the new IO. Learned counsel stated that it may be appreciated that proceedings have got delayed not due to any reasons attributable to the respondents; on the contrary the delay has occurred entirely due to frivolous objections raised by the applicant from time to time. It was also submitted that the ratio of this Tribunal's order in **K.S. Malik** (supra) will not apply to the present case because the KVS Board of Governors (BOG), in their 77th meeting held on 20.6.2007 have clearly resolved that the powers of the President of India under Rule 9 of the CCS(Pension) Rules, 1972 would be exercised by the Chairman, KVS in respect of the KVS employees. Concluding his arguments, Shri K.M. Singh, learned counsel for the respondents submitted that the disciplinary proceedings against the applicant is continued after obtaining the approval of the competent authority under Rule 9(2)(a) CCS(Pension) Rules, 1972; the legality of which cannot be questioned and that the applicant may be directed to co-operate in the conduct of the disciplinary proceedings and the reliefs claimed in the OA must be denied to the applicant.

7. We have considered the arguments put forth by the learned counsel for both the parties and have also perused their pleadings and the documents annexed thereto. We find that the prior to the start of disciplinary proceedings against the applicant under Rule 14 of the CCS (CCA) Rules, 1985, the respondents have got a preliminary inquiry conducted and after satisfying themselves that, *prima facie*, the charges against the applicant appear to be true, decided to issue the charge sheet dated 28.6.2006 to him. On perusal of the records, we also find that the inordinate delay in completing the disciplinary proceedings has occurred primarily due to the applicant raising various kinds of objections from time to time. The applicant retired from the service of KVS on 31.8.2011. With the service of the charge sheet dated 28.6.2006 on the applicant, the disciplinary proceedings is construed to have started against him. Rule 9(2)(a) CCS(Pension)1972 makes it very clearly that the departmental proceedings instituted while a govt. servant was in service shall be deemed to be proceedings under this rule. The said rule is extracted below:-

"(2)(a) The departmental proceedings referred to in sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after

the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President."

The respondent have also issued the impugned order dated 6.9.2011(Annexure A-2) to this effect.

8. When the case came up for hearing on 07.10.2015, a question arose as to whether the KVS has notified any authority who could exercise powers of the President under Rule 9 of the CCS(Pension) Rules, 1972. Learned counsel for the applicant produced a copy of the minutes of the 77th meeting of KVS Board of Governors (BOG) held on 20.6.2007 wherein the BOG has resolved that the powers under the Rule 9 of CCS(Pension)Rules, 1972 are to be exercised by the Chairman, KVS. The said resolution is extracted below:-

**" ITEM NO.2 POWERS EXERCISE BY
PRESIDENT UNDER RULE 9 OF THE
CCS(PENSION)RULES, 1972 TO BE
EXERCISED BY CHAIRMAN, KVS.**

The Board approved the following proposals:

a) The powers conferred upon the President of India under Rules 9 of the CCS (Pension) Rules, 1972 fall within the domain of the Chairman, K.V.S. as he is the appropriate authority to exercise those powers as has been done in the past and in the present as the same is in accordance with THE GOVERNMENT OF INDIA (ALLOCATION OF BUSINESS)RULES.

b) In exercise of powers conferred upon the Chairman, K.V.S. under Article 12 of the Education Code, all decision taken and orders passed in the past under Rule 9 of the CCS(Pension) Rules, 1972 by Chairman, K.V.S. in the disciplinary cases/other cases in respect of retired employees of K.V.S. are approved as the same have been taken in proper exercise of powers vested in the Chairman, K.V.S."

9. It is an admitted fact that CCS (Pension) Rules, 1972 have been adopted by KVS mutatis mutandis. It is also crystal clear that the power of the President under Rule 9 of CCS (Pension) Rules, 1972 is to be exercised by the Chairman, KVS in respect of the KVS employees. The ratio of order of this Tribunal in the case of ***K.S.Malik*** (supra) will not apply in this case. K.S.Malik retired from service of KVS on 29.2.2004 and at that time the BOG resolution authorizing the Chairman, KVS to exercise the powers of the President under Rule 9 of CCS(Pension) Rules, 1972 was not

there. Although the BOG resolution dated 20.6.2007 authorises the Chairman to exercise the powers of the President under Rule 9 even in respect of past cases but that was not accepted by the Tribunal. Hence the present case is entirely different from **K.S.Malik** (supra). Admittedly the BOG resolution dated 20.6.2007 authorising the Chairman, KVS to exercise powers of the President under Rule 9 came into existence much earlier to the applicant superannuating from the service on 31.8.2011 and as such, we hold that the Chairman, KVS has full authority to exercise powers under Rule 9 of CCS (Pension) Rules, 1972 in respect of the applicant.

10. From the above discussion, it is quite clear that no illegality has been committed by the respondents in the conduct of the disciplinary proceedings against the applicant. We are also convinced that the applicant has been adopting delaying tactics although and thus obstructing the timely completion of disciplinary proceedings against him. We do not find any merit in the OA and hence, dismiss it. We also direct the respondent to conclude the enquiry proceedings within a period of three months from the date of receipt of a copy of this order considering the fact that the applicant has retired more than 4 years ago and he has not been paid his

retiral benefits and has been getting only the provisional pension. Applicant is also directed to fully co-operate with the respondents in the conduct and completion of the disciplinary proceedings within the given time frame. No order as to costs.

MA-2009/2015 & MA-2991/2014

In view of the order passed in the OA, MA -2009/2015 and MA-2991/2014 have become infructuous and accordingly stand disposed of.

(K.N. Shrivastava)
Member(A)

(Justice B.P.Katakey)
Member(J)

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